

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVE J. STOCKWELL,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
the Social Security Administration,

Defendant.

CASE NO. C07-5449BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Kelley Arnold, United States Magistrate Judge (Dkt. 18). The Court has considered the Report and Recommendation, Plaintiff's objections, and the file, and hereby adopts the Report and Recommendation for the reasons stated herein.

I. DISCUSSION

Plaintiff objects to the Report and Recommendation in several respects. Dkt. 19. The Court agrees with and adopts the Report and Recommendation over Plaintiff's objections for the reasons stated herein.

Plaintiff first contends that the Administrative Law Judge ("ALJ") did not give appropriate weight to his treating physician, Kip L. Kemple, M.D. With respect to Dr. Kemple, Mr. Stockwell contends that the ALJ's grounds for rejecting the opinion were speculative, that Dr. Kemple's opinion is consistent with other evidence in the record, and that rejecting Dr. Kemple's opinion on the basis that he is a rheumatologist rather than an orthopedic surgeon is not convincing. The ALJ

1 declined to afford significant weight to Dr. Kemple's opinion, memorialized in correspondence
2 dated September 20, 2006. Dkt. 9 at 30. The ALJ concluded that "Dr. Kemple may have in this
3 case stepped out of his role as an objective treating medical source and assumed the role of an
4 advocate." *Id.* The ALJ acknowledged that "it is difficult to confirm the presence of such
5 motives" but based this conclusion on the fact that Dr. Kemple's September 20, 2006, opinion
6 was inconsistent with the doctor's own treatment notes and conflicted with other substantial
7 evidence in the record. *Id.* Mr. Stockwell cites *Orn v. Astrue*, 495 F.3d 625, 643 (9th Cir. 2007),
8 for the proposition that a medical condition need not be included in every treatment note in order
9 for the reviewing court to conclude that an opinion is supported by the record as a whole. The
10 ALJ, consistent with this principle, viewed Dr. Kemple's September 20, 2006, opinion in the
11 context of his treatment notes and gave ample reasons, including the fact that Plaintiff's medical
12 issues were outside the field of rheumatology, for declining to afford this opinion significant
13 weight.

14 Second, Plaintiff contends that the ALJ did not give appropriate weight to his examining
15 therapist, Scott Christensen. Dkt. 19 at 4. Mr. Stockwell contends that the ALJ misrepresented Mr.
16 Christensen's opinion. The Court disagrees. Mr. Christensen concluded that Mr. Stockwell can sit
17 for about four hours per day and can stand or walk for about four hours per day "if frequent
18 changes of position or frequent walking." Dkt. 9 at 156. The ALJ summarized Mr. Christensen's
19 conclusion as follows:

20 During an eight-hour day, he concluded the claimant could sit for fifteen minutes
21 at a time and for two to four hours and stand or walk for fifteen minutes at a time
22 and for up to two hours. He further concluded that the claimant could sit, stand
23 and walk for a total of four hours each provided he is allowed to periodically
alternate sitting and standing to relieve pain or discomfort. . . . Mr. Christensen
indicated that the claimant could do light to medium work for an eight-hour work
day, when allowed to change position every fifteen to thirty minutes.

24 Dkt. 9 at 30. The ALJ did not misrepresent or mischaracterize Mr. Christensen's opinion.

25 Third, Plaintiff contends that the ALJ did not properly consider his testimony. The Court
26 agrees with the Report and Recommendation's conclusion that the ALJ offered several sufficient
27 bases for discrediting Mr. Stockwell's testimony, including the following: Mr. Stockwell's
28 testimony was not supported by objective medical findings or other corroborative evidence, his

1 efforts at controlling his symptoms through routine and conservative treatment have been
2 successful, he was a “poor historian,” he “hesitated for long periods before answering a question
3 and required prompting for details,” and his responses were evasive, vague, and inconsistent at
4 times. Dkt. 9 at 28.

5 Finally, having concluded that the ALJ properly considered the opinions of Dr. Kemple
6 and Mr. Christensen and provided a sufficient basis for discrediting Mr. Stockwell’s testimony,
7 the Court denies Plaintiff’s objections regarding his residual functional capacity, and his ability
8 to perform past relevant work or other work.

9 II. ORDER

10 Therefore, it is hereby

11 **ORDERED** that the Court **ADOPTS** the Report and Recommendation (Dkt. 18), and the
12 administrative decision is **AFFIRMED**.

13 DATED this 30th day of June, 2008.

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17 BENJAMIN H. SETTLE
18 United States District Judge
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